

EXHIBIT 9

Deposition	Plaintiffs' Designation	Defendants' Corresponding Counter Designation	Reason that Defendants' Counter Designation Must be Considered According to Fed.R.Civ.P 32(a)(4)
Richard Nilsen, January 3, 2005	60:24-61:11, 61:21-62:10, 63:6-22	60:7-11	Both Defendants' designation and Plaintiffs' designation deal with questions about statements made by William Buckingham and are part of the same discussion
	83:25-84:5	70:24-71:22	Defendants' designation addresses the board's directive to teachers regarding the statement at issue in this case, and why the focus of in-school curriculum is on Darwinian theory, and relates to Plaintiffs' later designation regarding the idea that students will be made aware of intelligent design and what other theories are referred to in the statement

In The Matter Of:

*Tammy Kitzmiller, et al. v.
Dover Area School District, et al.*

*Richard Nilsen
January 3, 2005*

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Word Index included with this Min-U-Script®

[1] A: Not that I can remember.
 [2] Q: Do you remember any other School Board member bringing
 [3] up the subject of Creationism at any School Board
 [4] meeting?
 [5] A: Not that I can remember.
 [6] Q: If you can turn to the next page.
 [7] A: (Witness complies.)
 [8] Q: Do you see there is a paragraph which begins with the
 [9] words Assistant Superintendent Michael Baksa?
 [10] A: Yes.
 [11] Q: And two paragraphs down from that, the article reports
 [12] that Mr. Baksa said that teachers may make reference to
 [13] Creationism in class. Do you see that?
 [14] A: Yes.
 [15] Q: Were you aware that —
 [16] MR. GILLEN: Objection, hearsay.
 BY MR. ROTHSCHILD:
 [18] Q: Were you aware that the newspaper reported that
 [19] statement by Mr. Baksa?
 [20] A: I don't remember that, no.
 [21] Q: Do you know whether Mr. Baksa made that statement?
 [22] A: I don't remember that.
 [23] Q: Do you remember Mr. Baksa ever making any statements
 [24] about teachers making reference to Creationism in class?
 [25] A: No, I do not.

[1] Q: Would you turn to the next article which is a June 9th,
 [2] 2004 article from the York Daily Record?
 [3] A: (Witness complies.)
 [4] Q: Do you see at the bottom of the paragraph — it reports
 [5] Board President Alan Bonsell disagreed saying there were
 [6] only two theories (Creationism and evolution) that could
 [7] possibly be taught. Are you aware —
 [8] MR. GILLEN: Objection, hearsay.
 BY MR. ROTHSCHILD:
 [10] Q: Are you aware of the newspaper reporting that statement
 [11] by Mr. Bonsell?
 [12] A: I do not remember that, no.
 [13] Q: Do you remember Mr. Bonsell making that statement?
 [14] A: No, I do not.
 [15] Q: Do you remember Mr. Bonsell making any reference to
 [16] Creationism at any time in a Board meeting?
 [17] A: At a Board meeting, I do not remember that, no.
 [18] MR. ROTHSCHILD: Pat, as we go through these
 [19] articles, you can have a standing objection to hearsay.
 [20] I don't agree with it, but you won't have waived it by
 [21] not making it each time.
 [22] MR. GILLEN: Okay.
 BY MR. ROTHSCHILD:
 [24] Q: Could you turn to the next article which is a June 10th,
 [25] 2004 article from the York Daily Record?

[1] Turn the page.
 BY MR. ROTHSCHILD:
 [3] Q: Sorry about that.
 [4] A: There's two 14's.
 [5] Q: Do you see the second paragraph?
 [6] A: Yes.
 [7] Q: Were you aware that the newspaper reported those
 [8] statements by Mr. Buckingham?
 [9] A: No.
 [10] Q: Do you remember Mr. Buckingham making those statements?
 [11] A: No.
 [12] Q: Do you have a personal understanding of what is meant by
 [13] the term Creationism?
 [14] A: Yes.
 [15] Q: What is your understanding?
 [16] A: My understanding is creation refers to the Biblical
 [17] account of the origins of life.
 [18] Q: Anything else?
 [19] A: No.
 [20] Q: Do you know that to be a scientific proposition?
 [21] A: I do or do not. I have no comment on that.
 [22] Q: You don't have an understanding?
 [23] A: No.
 [24] Q: In the same article two paragraphs down, the paper
 [25] reports that Mr. Buckingham said this country wasn't

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[1] founded on Muslim beliefs or evolution. He said this
 [2] country was founded on Christianity, and our students
 [3] should be taught as such.
 [4] Were you aware that the paper reported that
 [5] statement?
 [6] A: I'm aware of the context, not the specific verbiage.
 [7] Q: Explain what you mean by that.
 [8] A: Meaning I am aware of the fact that the paper reported
 [9] that he made comments associated with Muslim beliefs and
 [10] Christianity. But as far as those specific words, I
 [11] don't remember those specific words.
 [12] Q: Okay. Did you actually hear Mr. Buckingham say anything
 [13] on the subject?
 [14] A: Which subject?
 [15] Q: The subject captured in those words, if not the specific
 [16] words.
 [17] A: Which subject? There's a number of subjects.
 [18] Q: The subject of Muslim beliefs and the country being
 [19] founded on Christianity?
 [20] A: I am sorry. The question again?
 [21] Q: Did you ever hear Mr. Buckingham make statements to that
 [22] effect?
 [23] A: Yes.
 [24] Q: Can you describe the circumstances in which he made
 [25] those statements?

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[1] A: No.
 [2] Q: Was it at a School Board meeting?
 [3] A: Yes.
 [4] Q: How was it that you came to hear what was being said?
 [5] A: He said it at a School Board meeting.
 [6] Q: But you don't remember anything else about the
 [7] circumstances in which he said it?
 [8] A: No.
 [9] Q: Did you respond to that in any way?
 [10] A: No.
 [11] Q: Do you agree with those statements?
 [12] A: Which statements?
 [13] Q: The statements about this country wasn't founded on
 [14] Muslim beliefs or evolution. This country was founded
 [15] on Christianity and our students should be taught as
 [16] such.
 [17] A: Housed within that are four or five different
 [18] components. I do not know whether this country was
 [19] founded or was not founded on Muslim beliefs. I do not
 [20] know whether this country wasn't founded on evolution.
 [21] This country was founded on Christianity?
 [22] Q: You agree with that?
 [23] A: No.
 [24] Q: What about the statement our students should be taught
 [25] as such?

[1] A: I don't believe that. I wouldn't expect students to be
 [2] taught as such.
 [3] Q: Was there any reaction to this statement by
 [4] Mr. Buckingham by anybody there at the meeting?
 [5] A: I don't know whether there was or was not.
 [6] Q: Could you turn to the article from the York Dispatch
 [7] dated June 15, 2004 entitled Church State Issue Divides.
 [8] If you can turn to the page — the second page.
 [9] A: (Witness complies.)
 [10] Q: Five paragraphs down or the fourth full paragraph there
 [11] is a paragraph that says nearly 2,000 years ago, someone
 [12] died on a cross for us. Shouldn't we have the courage
 [13] to stand up for him — attributed to Mr. Buckingham.
 [14] Were you aware that the paper reported that
 [15] statement?
 [16] A: No.
 [17] Q: Do you know whether Mr. Buckingham made that statement?
 [18] A: Yes.
 [19] Q: When did he make it?
 [20] A: That, I don't remember.
 [21] Q: Was it at a Board meeting?
 [22] A: Yes.
 [23] Q: What was being discussed when he made that statement?
 [24] A: I don't remember.
 [25] Q: Do you remember whether the biology curriculum was being

[1] discussed?
 [2] A: My recollection is that it was not being discussed at
 [3] that time period.
 [4] Q: But you have no recollection of what other subject
 [5] matter was being discussed?
 [6] A: No.
 [7] Q: The next paragraph says that Board members Alan Bonsell
 [8] and Noel Wenrich agreed with Buckingham saying
 [9] Creationism should be taught to balance evolution.
 [10] Do you remember Mr. Bonsell or Mr. Wenrich making
 [11] statements about Creationism being taught to balance
 [12] evolution?
 [13] A: No.
 [14] Q: Mr. Nilsen, do I understand you correctly that not
 [15] notwithstanding the fact that there are many articles
 [16] during this June period about discussion about teaching
 [17] Creationism, you have no recollection of the subject of
 [18] Creationism at any School Board meeting?
 [19] A: That's correct.
 [20] Q: Have the School Board members expressed to you in any
 [21] other setting their desire to have Creationism taught in
 [22] the public school?
 [23] A: No. Exact opposite.
 [24] Q: What do you mean by the exact opposite?
 [25] A: They don't want the origins of life taught at all.

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[1] prepared that statement?
 [2] A: Mr. Baksa in conjunction with Board members and
 [3] teachers.
 [4] Q: Other than providing the teachers that statement which
 [5] they are required to read, have the teachers been given
 [6] any other guidance about how to present this unit?
 [7] A: Yes.
 [8] Q: What other guidance?
 [9] A: If any student brings up the question of either any
 [10] other Creationism or any other origins of life, they
 [11] have been directed not to speak to that, but to give
 [12] that information and that question directly to either
 [13] their parents and/or their own research.
 [14] Q: Let me make sure I got that right. If any student
 [15] brings up either Creationism or origins of life, they
 [16] are directed not to answer, but to instruct the students
 [17] to ask their parents or do their own research?
 [18] A: Yes.
 [19] Q: Have the teachers been given any other guidance besides
 [20] that directive?
 [21] A: No.
 [22] Q: Who gave the teachers that directive?
 [23] A: Me.
 [24] Q: How was that communicated?
 [25] A: November 24th, 1:05, this office, this room.

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[1] Q: Sitting around a table?
 [2] A: Yes.
 [3] Q: Who was present for that meeting?
 [4] A: Mr. Baksa, myself, the Union President, Bill Miller,
 [5] Past President, and the Science Department.
 [6] Q: Did you instruct them how they — how they were required
 [7] to answer any other kinds of questions by students
 [8] relating to this unit?
 [9] A: They were instructed not to answer any questions dealing
 [10] with the origins of life. Any other questions in
 [11] Darwinian Theory or anything else that is discussed is
 [12] within their own domain.
 [13] Q: Did you give them any instructions about how to answer
 [14] questions about the subject of Intelligent Design?
 [15] A: Yes.
 [16] Q: What instructions were those?
 [17] A: Not to discuss it. Report — any student requesting
 [18] that is to immediately go back to either their parents
 [19] or their own research, not a topic of discussion.
 [20] Q: Why?
 [21] A: Why was Mr. Miller the past President?
 [22] Q: No. Well done.
 [23] A: I figured at 11:30, you needed it.
 [24] Q: Why did you give the teachers the directive not to
 [25] answer any questions about Intelligent Design?

[1] A: I didn't want to be sitting in a meeting with you across
 [2] the table in a legal suit.
 [3] Q: Is that the only reason?
 [4] A: I believe it is a topic of discussion that should be
 [5] discussed with parents, not the School District.
 [6] Q: What is it about Intelligent Design which is part of the
 [7] school's biology curriculum which makes it —
 [8] MR. GILLEN: Objection, foundation,
 [9] characterization.
 [10] BY MR. ROTHSCHILD:
 [11] Q: What is it about Intelligent Design that makes it a
 [12] subject appropriate for discussion with parents, but not
 [13] in the school?
 [14] A: The school has decided that the curriculum should focus
 [15] on the Darwinian theory and not focus on other options
 [16] due to time constraints.
 [17] Q: Is that the only reason — is time constraints the only
 [18] reason that the school has decided it should focus on
 [19] Darwin and not other options?
 [20] A: We are specifically, as the press release says, a
 [21] standards driven curriculum and only address the
 [22] standards.
 [23] Q: What is the purpose of addressing this section of the
 [24] curriculum if it is not going to be discussed, not part
 [25] of the standards?

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[1] A: The purpose is there are individual students that have
 [2] other opinions beyond the Darwinian. We did not want to
 [3] be discriminatory. We firmly believe that any
 [4] individual has a right to their own beliefs. We do not
 [5] want to be discriminatory.
 [6] We are required to teach Darwin. We are also
 [7] required not to be discriminatory.
 [8] Q: How do you know that there are individual students that
 [9] have other opinions besides Darwin's?
 [10] A: I have talked to other students.
 [11] Q: Is it your understanding that the individual opinion
 [12] that these students hold different from Darwin's theory
 [13] is Intelligent Design?
 [14] MR. GILLEN: Objection, foundation.
 [15] A: Could you ask that question, again?
 [16] BY MR. ROTHSCHILD:
 [17] Q: Is it your understanding that the individual beliefs
 [18] that these individuals hold different from Darwin's
 [19] theory include Intelligent Design?
 [20] A: Some, yes.
 [21] Q: When did you become aware that students believed in
 [22] Intelligent Design?
 [23] A: Since I have been in education.
 [24] Q: Mr. Nilsen, didn't you testify that the first time you
 [25] became aware of Intelligent Design was July, 2004?

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[1] Q: You draw a distinction between making aware and
[2] teaching?
[3] A: Yes.
[4] Q: Do you believe the students will be learning as they
[5] listen to the statement?
[6] A: Yes.
[7] Q: So they will be learning?
[8] A: Yes.
[9] Q: One of the things that the students will be learning is
[10] that there are gaps and problems in Darwin's Theory;
[11] correct?
[12] A: Yes.
[13] Q: But at the same time that the teachers present that
[14] statement, they will not be presenting to the students
[15] the fact of whether there are gaps and problems in
[16] Intelligent Design; correct?
[17] A: That's correct.
[18] Q: So the students will learn that there are gaps and
[19] problems in Darwin's Theory, but they will not learn
[20] that there are gaps and problems in Intelligent Design?
[21] A: That's correct.
[22] Q: Would you agree that that is misleading the students?
[23] A: No.
[24] Q: You don't think the students will be misled by the fact
[25] that they are being told that there are gaps and

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[1] problems in one theory, but there are not gaps and
[2] problems in the other explanation?
[3] A: No.
[4] Q: That is not because you believe that there are no gaps
[5] and problems in Intelligent Design; is it?
[6] A: That's correct.
[7] Q: You don't know one way or the other; do you?
[8] A: No.
[9] Q: The required statement also compels teachers to tell the
[10] students that Darwin's Theory is a theory and not a
[11] fact; correct?
[12] A: Yes.
[13] Q: Now Darwin's Theory is not the only theory being taught
[14] to students in the Dover School District; is it?
[15] A: That's correct.
[16] Q: It is not the only scientific theory?
[17] A: That's correct.
[18] Q: What is the significance to your understanding of
[19] characterizing a scientific concept as a theory? What
[20] does that mean to you?
[21] A: That it can't be proven in the lab.
[22] Q: Anything else?
[23] A: No.
[24] Q: What was the purpose of including that statement in the
[25] curriculum?

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[1] A: I can't speak to that. I wasn't involved in the
[2] discussions.
[3] Q: Does the School Board require teachers to tell students
[4] that any other theory is a theory, not a fact?
[5] A: I'm not aware of any.
[6] Q: Can you explain why evolution is singled out among all
[7] scientific theories taught to Dover students as being a
[8] theory, not a fact?
[9] A: Again, I was not involved in the discussions.
[10] Q: Have you ever made any effort to make sure that students
[11] are made aware that other theories are just theories,
[12] not facts?
[13] A: No.
[14] Q: Do you require teachers to make students aware that
[15] there are gaps and problems in any other scientific
[16] theories besides Darwin's Theory?
[17] A: No.
[18] Q: Do you believe that is because all the other theories
[19] don't have any gaps and problems?
[20] A: No.
[21] Q: Again, this is Darwin's Theory being singled out?
[22] A: I won't use those words, no.
[23] Q: It is the only one being treated that way?
[24] A: Yes.
[25] Q: In the resolution, it says that students will be made

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[1] aware of other theories of evolution including, but not
[2] limited to, Intelligent Design.
[3] What other theories are being referred to in that
[4] resolution?
[5] A: I don't know.
[6] Q: Are you aware of any other theories of evolution?
[7] MR. GILLEN: Objection on the grounds the question
[8] is ambiguous. You asked are you aware of any other
[9] theories of evolution.
[10] BY MR. ROTHSCHILD:
[11] Q: Other than Darwin's Theory and Intelligent Design, are
[12] you aware of any other theories?
[13] MR. GILLEN: Objection to the characterization of
[14] Intelligent Design.
[15] MR. ROTHSCHILD: Fair point. Let me withdraw it.
[16] BY MR. ROTHSCHILD:
[17] Q: Do you consider Intelligent Design a theory of
[18] evolution?
[19] A: How are you defining evolution?
[20] Q: I will make it simpler. Do you consider Intelligent
[21] Design a scientific theory?
[22] A: Yes.
[23] Q: On what do you base that opinion?
[24] A: Scientists that have said it is.
[25] Q: What scientists are you referring to?